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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA – RENO DIVISION

UTHERVERSE, INC., a Nevada corporation,
 BRIAN SHUSTER, an individual,

Plaintiffs,

v.

BRIAN QUINN, an individual; JOSHUA
 DENNE, and individual; BLOCKCHAIN
 FUNDING, INC. a Delaware corporation;
 BLOCKCHAIN ALLIANCE LLC, a
 Wyoming Limited Liability Company;
 MASTERNODE PARTNERS, LLC, a
 Wyoming Limited Liability Company;
 LYNNE MARTIN, an individual; NIYA
 HOLDINGS, LLC, a Nevada limited liability
 company; NIMA MOMAYEZ, an individual;
 and JEREMY ROMA, an individual,

Defendants.

AND RELATED COUNTERCLAIM.

Case No. 3:25-cv-00020-MMD-CSD

**REPLY BRIEF IN SUPPORT OF
 MOTION TO STRIKE AFFIRMATIVE
 DEFENSES AND PORTIONS OF
 AMENDED COUNTERCLAIM
 PURSUANT TO FRCP 12(f)**

ORAL ARGUMENT REQUESTED

Complaint Filed: January 10, 2025

Counterclaim Filed: February 28, 2025

Amended Counterclaim Filed: April 27, 2025

Date: TBD

Time: TBD

Courtroom: TBD

Filed Concurrently with Reply Brief in Support
 of Motion to Dismiss

Counter-Defendants, Utherville, Inc. (“UI”); Brian Shuster (“Shuster”); Utherville Digital, Inc. (“UDI”); Peter Gantner (“Gantner”); Nexus Venture LLC (“Nexus”); Ari Good (“Good”); and Gary Shuster (“Gary”; collectively, “Counter-Defendants”), respectfully submit their Reply Brief in Support of Motion to Strike Affirmative Defenses and Portions of Amended Counterclaim Pursuant to FRCP 12(f) (“Motion to Strike”).

INTRODUCTION

In their Opposition to Motion to Strike (“Opposition”, and when cited “Opp.”), Counterclaimants accuse Counter-Defendants of needlessly creating work. The opposite is the case. Had Counterclaimants carefully drafted their Counterclaim to meet applicable pleading standards and to avoid needless allegations and spurious issues, this Motion to Strike would be unnecessary. Instead, Counterclaimants did a rush “cut and paste” job, neglecting to remove allegations from a dismissed California state court case, and either failed to delete or purposefully included allegations that are redundant, immaterial, impertinent and/or scandalous.

DISCUSSION

A. Affirmative Defenses are Subject to Heightened Pleading Requirements

After the decisions in *Twombly*¹ and *Iqbal*², there has been much disagreement among district courts regarding the plausibility standards under which pleadings, including affirmative defenses pled in the answer are to be resolved. While a few courts have declined to extend the *Twombly/Iqbal* heightened standard to affirmative defenses, the majority view appears to be that the *Twombly/Iqbal* plausibility standard does apply to affirmative defenses. See *Barnes v. AT&T Pension Ben. Plan-Nonbargained Program*, 718 F.Supp.2d 1167, 1172 (N.D. Cal. 2010) (stating that, “Applying the standard for heightened pleading to affirmative defenses serves a valid purpose in requiring at least some valid factual basis for pleading an affirmative defense...”).

Moreover, the Nevada Supreme Court has emphasized that affirmative defenses must provide adequate notice to the opposing party. In *Great Am. Ins. Co. v. General Builders Inc.*, 113 Nev. 346 (Nev. 1997), the court ruled that an affirmative defense must be pleaded with sufficient

¹ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)

² *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)

1 clarity to notify the opposing party of its nature. *Id.*, 353-54.

2 In this case, Counterclaimants’ Affirmative Defenses provide no bases for the defenses.
3 Instead, Counterclaimants rely on mere incantations of the names of the defenses themselves. This
4 does not meet Counterclaimants’ burden to provide fair notice of its defense. Additionally, many
5 of the defenses are simply not proper affirmative defenses.

6 **B. A Showing of Prejudice is Not Required in the Ninth Circuit**

7 In their Opposition, Counterclaimants contend that “Where the moving party cannot
8 demonstrate the material will prejudice a party, ‘courts frequently deny motions to strike even
9 though the offending matter literally was within one or more of the categories set forth in Rule
10 12(f).’” Opp. 10:21-23 (citing *DS-Concept*, 2017 WL 2180982, at *3 and quoting *New York City*
11 *Employees’ Retirement System v. Barry*, 667 F.Supp.2d 1121, 1128 (N.D. Cal. 2009). However,
12 there is no Supreme Court or Ninth Circuit authority requiring a plaintiff to demonstrate prejudice
13 to justify a motion to strike affirmative defenses.

14 In fact, in an unpublished but often cited opinion, the Ninth Circuit rejected the argument
15 that a moving party should be required to demonstrate prejudice. *See, e.g., GS Holistic, LLC v.*
16 *Crows Landing Smooth Shop Inc.*, No. 1:22-cv-1454 JLT SAB, 2023 WL 2815746 (April 6, 2023,
17 E.D. Cal. 2023) (acknowledging that, albeit in an unpublished opinion, “the Ninth Circuit rejected
18 the argument that a moving party should be required to demonstrate prejudice... ‘Rule 12(f) says
19 nothing about a showing of prejudice.’ The Ninth Circuit expressly indicated it ‘decline[d] to add
20 additional requirements to the Federal Rules of Civil Procedure (“FRCP”) when they are not
21 supported by the text of the rule’”, citing *Atlantic Richfield Co. v. Ramirez*, 1999 WL 273241 at *2
22 (9th Cir. 1999) (internal citation omitted), and declining to require plaintiff to show prejudice in
23 moving to strike under Rule 12(f)). Furthermore, the text of rule 12(f) allows a court to strike
24 material sua sponte.

25 Given that Counterclaimants have cited to no controlling authority in this circuit that
26 requires evidence of material prejudice on behalf of the Plaintiff, Counter-Defendants should not
27 be required to show prejudice.

28 ///

C. Counterclaimants Affirmative Defenses Should Be Stricken

1. 1st Affirmative Defense (Failure to State a Claim)

Counterclaimants cite Connecticut District Court and Southern District of New York decisions to support their contention that “[I]t is well settled that the failure-to-state-a claim defense is a perfectly appropriate defense to include in the answer.” Opp. 11:19-22. This is not the case in the Ninth Circuit, which recognizes that failure to state a claim is not a cognizable affirmative defense. *See Comercializadora Recmaq v. Hollywood Auto Mall, LLC*, 2014 WL 3628272, at *17 (S.D. Cal. July 21, 2014). Rather, failure to state a claim upon which relief can be granted is a failure of plaintiff’s prima facie case. *Vogel v. OM ABS, Inc.*, 2014 WL 340662, at *2 (C.D. Cal. Jan. 30, 2014) citing *Barnes v. AT&T Pension Ben. Plan-Nonbargained Program*, 718 F.Supp.2d 1167, 1174 (N.D. Cal. 2010) (“*Barnes*”).

Accordingly, Counterclaimants First Affirmative defense should be stricken.

2. 2nd Affirmative Defense (Plaintiff’s Failed to Join Indispensable Parties)

The Opposition states that “Counterclaimants are but a few of several investors in Utherville who provided funds to Utherville; therefore, there are likely several investors who fit the profile of Counter-Defendants’ bizarre theory...” Opp. 12:6-9.

As an initial matter, as much as Counterclaimants would like this Court to believe that Counter-Defendants’ theory is “bizarre” or “absurd” (*see* Counterclaimants’ Opposition to Motion to Dismiss Counterclaim (Doc. 60), 3:9-10), the U.S. Supreme Court has recognized that the “complexity of an illegal scheme may not be used as a shield to avoid detection.” *Andersen v. Maryland*, 427 U.S. 463, 480, fn. 10 (1976).

What Counterclaimants are really saying is that there may be additional Counterclaimants who were defrauded, not that there may be other Defendants that must be joined. Regardless, FRCP 15 freely gives leave to add affirmative defenses when justice so requires. The fact that Counterclaimants do not identify the indispensable party fails to give Counter-Defendants fair notice and thus should be stricken. *See* Motion to Strike (Doc. 57-1), 4:16-21.

3. 3rd Affirmative Defense (Plaintiff’s Failed to Plead with Particularity)

The Opposition clarifies that “Counterclaimants here allege more generally that Counter-

Defendants failed to plead claims with particularity.” Opp. 12:17-18. This purported affirmative defense is legally insufficient because it is not a proper affirmative defense. An affirmative defense is one that admits the allegations in the complaint and provides a legal reason why the Defendants should not be liable. *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002) (“*Zivkovic*”); *Barnes* at 1174. That Counter-Defendants failed to plead claims with particularity does not constitute a proper defense because it does not admit the allegations in the Complaint³ while asserting a legal reason why Counterclaimants should not be liable.

4. 4th Affirmative Defense (Unclean Hands)

Even assuming, *arguendo*, that allegations in the Counterclaim may be imported into Counterclaimants’ affirmative defenses (which Counter-Defendants do not concede), the Counterclaim’s allegations of fraud are not pled with the required specificity, and thus, do not provide fair notice of the facts surrounding the affirmative defense of unclean hands. Thus, this affirmative defense should be stricken.

5. 5th, 7th, 8th, 10th, and 24th through 28th Affirmative Defenses

The law states that duplicative defenses should be stricken. (Fed. R. Civ. P. 12(f) (The court may strike from a pleading ... any redundant... matter”). Counterclaimants states that its 5th, 7th, 8th, 10th, 24th through 28th affirmative defenses should not be stricken based on the same arguments they made in support of their 4th affirmative defense, thus implying that these defenses are duplicative of their unclean hands defense (Opposition, 13:12-19). Regardless, these affirmative defenses fail for the same reason as the 4th affirmative defense above – they do not provide fair notice of the facts surrounding the affirmative defenses (see FRCP 8) and thus, should be stricken.

In addition to being duplicative, the 24th through 28th affirmative defenses state among other things that “Shuster breached his fiduciary duties to Defendants,” (Opposition, 18:18) and “Shuster forfeited any entitlements because of his breach of fiduciary duties.” (Opposition, 18:19). These purported affirmative defenses are legally insufficient and should be stricken because they do not constitute proper affirmative defenses under Nevada law and the Federal Rules of Civil

³ Note that only some Counter-Defendants are Plaintiffs (*i.e.*, Shuster and UI).

1 Procedure.

2 As indicated above, an affirmative defense is one that admits the allegations in the complaint
3 but provides a legal reason why the Defendants should not be liable. *Zivkovic*, at 1088; *Barnes*, at
4 1174. The 24th through 28th affirmative defenses do not admit allegations in Counter-Defendant's
5 complaint while asserting a legal reason why Defendants should not be liable. Thus, they should be
6 stricken.

7 **6. 6th, 9th, 11th through 20th, and 31st through 33rd Affirmative Defenses**

8 These Affirmative Defenses are clearly improper, not properly pled, or not affirmative
9 defenses at all. For example, the statement that "Counterclaimants made no false representations of
10 material facts which they knew to be false", or statements like "Counterclaimants had no intent to
11 defraud Plaintiffs" are not proper affirmative defenses.

12 Generally, affirmative defenses accept, rather than contradict, well-pleaded allegations of
13 the complaint. *Crow v. Wolpoff & Abramson*, No. 06-CV-3228, 2007 WL 1247393, at *2 (D. Minn.
14 Apr. 19, 2007) (citing *Gwin v. Curry*, 161 F.R.D. 70, 71 (N.D. Ill. 1995)). Counterclaimants grocery
15 list of affirmatives defenses are actually negative defenses not cognizable under applicable
16 substantive law. One court has held that "'a true affirmative defense raises matters outside the scope
17 of plaintiff's prima facie case and such matter is not raised by a negative defense.'" *Instituto*
18 *Nacional De Comercializacion Agricola (Indeca) v. Cont. III. Natl Bank*, 576 F. Supp. 985, 991
19 (N.D. Ill. 1983) (citing 2A Moore's Federal Practice ¶ 8.27 [4], at 8-260). The Ninth Circuit has
20 also adopted a rule that "[a] defense which demonstrates that plaintiff has not met its burden of
21 proof is not an affirmative defense. *Zikovic v. S. Cal Edison Co.*, 302 F.3d 1080, 1088 (9th Cir.
22 2002).

23 It appears that Counterclaimants are either confused or trying to confuse this Court
24 regarding who has the burden of proof with respect to Affirmative Defenses. *See* Opp. 14:1-6
25 (where Counterclaimants erroneously argue that "if... proving these defenses would negate
26 elements of [Counter-Defendants] claims, then [the affirmative defenses] 'pertain' and are
27 'necessary[] to the issues in question.'" (third bracket in original).)

28 Because Counterclaimants cannot establish that defenses that contradict or negate an
element of a well-pleaded complaint are appropriate affirmative defenses, the 6th, 9th, 11th through
20th, and 31st through 33rd Defenses listed above should be stricken.

1 **7. 21st through 23rd, 29th, and 30th Affirmative Defenses**

2 Counterclaimants’ Affirmative Defenses that: “Defendants have committed no acts of
3 dominion over Plaintiffs’ property/chattels”, “Defendants’ acts of dominion, if any, were not
4 wrongful”, “Shuster violated his duty of loyalty to Defendants” and Shuster owed a fiduciary duty
5 to Defendants...” are not proper affirmative defenses for the reasons stated for the 24th through 28th
6 Affirmative Defenses and the 6th, 9th, 11th through 20th, and 31st through 33rd Affirmative
7 Defenses. These statements merely negate elements of Counter-Defendants’ claims.

8 Additionally, the 23rd Affirmative Defense does not meet the minimum standard of
9 pleading pursuant to FRCP 8. Thus, for these reasons, the 21st through 23rd, 29th, and 30th
10 Affirmative Defenses should be stricken.

11 **8. Affirmative Defense 36 (Reservation of Right to Amend Amended Answer)**

12 In their Opposition, Counterclaimants admit that this reservation is not an affirmative
13 defense and concede it should be stricken. Opp. 14:27-15:3. Thus, this Court should strike
14 Affirmative Defense 36.

15 **D. Counterclaimants Allegations Should Be Stricken:**

16 **1. Allegations Regarding CA Penal Code Section 496(c) and Security Laws Have**
17 **No Possible Bearing on the Subject Matter of the Litigation**

18 21:1-10 & 21:15 (portion stating “treble damages under California Penal Code § 496(c)”).

19 In these portions of the ACC, Counterclaimants allege that Counter-Defendants violated
20 California securities laws and committed theft under California Penal Code section 496(c)⁴.
21 Counterclaimants as much as admit that these allegations are left over from the California litigation,
22 yet maintain they are material. Opposition, 15:5-11. They frame the materiality as the “unlawful
23 objective” of the cause of action for civil conspiracy. *Id.* at 15:12-19.

24 Indeed, a claim for civil conspiracy requires the commission of an underlying tort. If the
25 underlying tort is inadequately pled, the conspiracy cannot stand. *Cambridge Elecs. Corp. v. MGA*
26 *Elecs., Inc.*, 227 F.R.D. 313, 336 (C.D. Cal. 2004). Here, however, the underlying tort pled is not a
27

28

⁴ CA Penal Code Section 496 makes it a crime to knowingly buy, receive, conceal, sell, or withhold stolen property. Subsection (c) provides that an injured person may bring an action for three times the amount of actual damages.

violation of Penal Code Section 496, but instead, is fraud. ACC, 42:1-17; *see also* 33:1-2. These leftover allegations have no significance, importance, or possible bearing on the civil conspiracy cause of action, or the underlying fraud pled. In fact, the ACC makes no plausible, non-conclusory allegations as to receipt of stolen property by any of the Counter-Defendants named in the fraud cause of action (*i.e.*, Shuster, UI, or UDI), or in the civil conspiracy cause of action (*i.e.*, UI, UDI, Good, Gantner, Nexus or Gary).⁵ Nor have Counterclaimants sought treble damages in their prayer for relief. The allegations of ACC 21:1-10 and 21:15 simply have no bearing whatsoever on the subject matter of this litigation.

2. Conclusory Allegations Regarding Shuster Intent to Defraud and Theft of Funds Have No Possible Bearing on the Subject Matter of the Litigation

23:24-26 (starting after “but now refuses to do so”); 26:7-9 (starting after “whatsoever”); 26:16-19 (starting after “whatsoever”); 27-1-3 (starting after “whatsoever”)

These parts of the ACC allege (with variations) that “Shuster has stolen the funds” and “On information and belief... Shuster never intended to honor the [alleged agreement] and intended to defraud and steal the money.” Counterclaimants argue that the allegations are pertinent and material to characterizing the overall fraudulent scheme by Shuster and/or Utherville. Opp., 16:6-7; 16:19-20; 17:9-11 (indicating same reasons); and 17:13-15 (indicating same reasons). To the extent that Counterclaimants are presenting such allegations as relevant background facts and/or to establish of pattern of fraud, these “facts” are conclusory, and no explanation is given as to what information Counterclaimants base their belief on. Thus, the allegations are not necessary to the issues in question. Further, such allegations improperly cast a derogatory light on Shuster and Utherville because there is no credible factual basis alleged in the ACC to support a cause of action for theft.

Thus, such allegations have no bearing whatsoever on the subject matter of this litigation are impertinent, immaterial, and scandalous and should be stricken.

///

⁵ Allegations as to UI and UDI are completely absent. As to Good, Gantner, Nexus, and Gary, the ACC repeats the same conclusory allegation (with minor differences), that “On information and belief, [Counter-Defendant] knowingly aided and conspired with Shuster to fraudulently conceal and withhold funds obtained from Counterclaimants” (ACC, 33:4-5; 33:25-27; 34:17-19; 34:27-35:1), and as to Good and Gantner that “On information and belief... [Counter-Defendant] knowingly received funds fraudulently obtained from Counterclaimants” (*id.* at 33:8-10; 34:2-4).

1 **3. Allegations Related to Utherverse’s Alleged Ties to the Pornographic Industry**
 2 **Are Scandalous and Have No Bearing on the Subject Matter of the Litigation**

3 27:27-28:3 (¶ 41 n total); 29:10-13 (¶ 47 in total)

4 These portions of the ACC allege that Shuster/Utherverse were tied to the pornographic
 5 industry. The Opposition feigns relevance based on expenditures by Counterclaimants to improve
 6 Utherverse’s reputation. Opp. 17:17-19 and 18:8-10. Tellingly, there are no allegations that
 7 Shuster/Utherverse misrepresented any ties to the pornographic industry. (*Id.*, 24:21-25:15.)

8 Moreover, allegations of involvement in the pornographic industry reflect on Shuster’s
 9 moral character, are not relevant to the alleged fraud or breach of contract issues and are added only
 10 to potentially inflame the jury. *See Solek v. K.B. Transportation, Inc.*, No. 21-cv-10442, 2021 WL
 11 5183873 (E.D. Mich. 2021) at *1 (striking paragraphs related to defendant’s alleged possession of
 12 child pornography); *Allstate Ins. Co. v. OMIC, LLC*, No. 17-13908, 2018 WL 8806551 at *5 (E.D.
 13 Mich. Sep. 24, 2018) (striking allegations not linked to the fraud scheme and included only to
 14 “inflame a factfinder and shed negative light on [the defendant’s] character”).

15 Thus, these paragraphs of the ACC should be stricken.

16 **4. Allegations Related to Hackett Are, At Minimum, Immaterial**

17 28:20-23 (¶ 44, starting after “past”)

18 The Opposition relates Denne’s alleged hiring of Hackett as “an expense of time and effort
 19 that Denne would not have incurred but for Shuster’s fraudulent misrepresentations about
 20 Utherverse’s profitability” and “Denne is thus entitled to damages for his efforts on behalf of
 21 Utherverse with regard to Hackett...” Opposition, 17:27-28, 18:3-4.

22 However, even if these portions of the Opposition are stricken, the beginning of paragraph
 23 44 would remain, which indicates that Denne brought in Hackett. ACC 28:19-20. What would be
 24 stricken are allegations that Hackett resigned due to lack of payment, ineffective corporate
 25 governance, fear of liability, and that Hackett is still owed money. Hackett is not a party to the action
 26 and whether or not he was paid and how much are not at issue here.

27 Further, the allegations related to Hackett’s reasons for allegedly resigning create a serious
 28 risk of prejudice to Shuster and may cause delay and confusions because Hackett is not a party to

1 this action, it would be burdensome for Shuster to answer such allegations, and the inclusion of
 2 such allegations may complicate the trial by requiring evidence of an agreement with Hackett not
 3 germane here. *See Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1528 (9th Cir. 1993), *rev'd on other*
 4 *grounds*, 510 U.S. 517 (streamlining resolution and focusing jury attention on the real issues by
 5 striking allegations that did not involve parties to the action, created serious risks of prejudice, delay
 6 and confusions of issues, and would unnecessarily complicate the trial by requiring evidence of
 7 unrelated agreements) (“*Fantasy*”).

8 Consequently, the allegations related to Hackett’s alleged resignation and the reasons
 9 therefor should be stricken.

10 **5. Allegations Related to Alleged Defamatory Statements by Shuster have No**
 11 **Bearing on the Subject Matter of the Litigations**

12 30:12-20 (¶ 54 in total)

13 For similar reasons as those set forth in item 4 above, allegations related to letters allegedly
 14 sent by Shuster containing allegedly defamatory statements confuse the issues, would be
 15 burdensome for Shuster to answer and implicate non-parties to the action. *See Fantasy*, at 1528.
 16 Such allegations have no bearing on the alleged fraud or on any other issues in this action.

17 **6. Allegations Regarding Shuster’s Character are Scandalous and Irrelevant**

18 31:3-4 (¶ 56 starting after “misrepresentations”); 31-5 – 32:24 (¶ 56, portions listed a-n)

19 These portions of the ACC purport to be “specific examples of Shuster’s character and
 20 propensity for fraudulent activity...” ACC, 31: 34. The Opposition indicates that the allegations
 21 lettered a-n are “all pertinent and material to the fraud and breach of fiduciary duty claims” because
 22 they demonstrate that “Shuster misappropriated investors’ funds”, including those of
 23 Counterclaimants, “squandered those funds, and deliberately mismanaged Utherverse and
 24 investors’ interests by extension.” Opposition, 19:8-12. However, the ACC is clear that a-n are
 25 “examples” included to show Shuster’s character but are not themselves allegations of fraudulent
 26 activity. ACC, 31:3-4. Indeed, a closer inspection reveals that none of the allegations are pertinent
 27 to the causes of action for fraud or breach of fiduciary duty, even though they may utilize the word
 28 “fraud” or some version of it.

Even putting aside that each of these “examples” of fraudulent activity are conclusory and conspicuously lack the specificity required by FCRP 9(b), each create a risk of prejudice to Shuster and may cause delay and confusions because the allegations involve individuals who are not parties to this action, it would be burdensome for Shuster to answer such allegations, and the inclusion of such allegations may complicate the trial by requiring evidence of agreements with non-parties not germane here. *See Fantasy* at 1528. Thus, each of these allegations should be stricken.

7. Allegations Related to Fraudulent Actions Not Known Have No Bearing on the Subject Matter of the Litigation

32:25-27 (¶ 57 in total)

The Opposition indicates this paragraph should not be stricken because it is “not cogently argued” and is without supporting authority. Opposition, 20:16-17. It further claims that the allegation is pertinent and material because the case “revolves around allegations from both sides that funds were misappropriated through fraud...” *Id.*, 20:18-19.

Common sense dictates that paragraph 57 is not a factual allegation and the statement has no bearing on the subject matter of the litigation. Of course, discovery may lead to additional allegations of fraud, and banking data and cryptocurrency wallet data will likely be requested in discovery. The addition of such allegations is unnecessary and immaterial and should be stricken.

8. Allegations Related to Alleged Manipulation of Value of Cryptocurrency Token Are Immaterial

36:3-18 (¶¶ 68, 69 in total)

The Opposition states that these paragraphs are material because they demonstrate that Counter-Defendants “had [tokens] in their possession while they were manipulating the markets” and it “demonstrates that tokens were withheld and that Utherverse fraudulently promised to deliver the tokens to obtain funds from Counterclaimants that they never planned to deliver.” Opposition, 21:3-6. However, the focus of these paragraphs is not on the failure of Utherverse or other Counter-Defendants to deliver tokens to Counterclaimants, but on alleged manipulation of the token market.⁶

⁶ Other portions of the ACC allege that Shuster never delivered tokens to Blockchain Funding and Masternode partners. *See e.g.*, ACC 26:3-7, 26:13-16.

None of the causes of action alleged in the ACC related to cryptocurrency market manipulation and such allegations do nothing more than confuse the issues in the action. *See Fantasy* at 1528. Thus, these paragraphs should be stricken.

9. Allegations Related to Utherverse Advertising

24:9-12 (¶ 31, in total)

Counter-Defendants dispute that this paragraph “clarifies some of the esoteric subject-matter (sic) in this case”, and that they must explain the prejudice caused by this paragraph. *See* Section B, above. Regardless, Counter-Defendants withdraw their request to strike paragraph 31 of the ACC.

CONCLUSION

For the reasons set forth above, and in their moving papers, Counter-Defendants respectfully request that the Court strike affirmative defenses 1-33 and 36, and those portions of the ACC detailed above.

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